

REMARKS

In the Advisory Action mailed by the Examiner on September 19, 2005, the Examiner indicated that the amendments of the original Rule 116 Amendment After Final Action filed on September 7, 2005, would not be entered because, "New issues and new matter are raised by reciting 'liquid' olive oil (Claim 1(b)) and 'to directly ... resulting mixture' (Claim 1(b))." The Examiner will please note that in this Second Rule 116 Amendment After Final Action the word "liquid" has been removed from Claim 1(b) and the phrase "to directly ... resulting mixture" in Claim 1(b) has been replaced by the phrase "to create the maximum possible embodiment of oil within the resulting mixture." Support for this phrase is found in the specification on page 2, line 41-42. Thus Applicant asserts he has addressed and removed any possible proposed amendments under Rule 116 that could constitute new matter. Applicant therefore restates the balance of his argument set forth in the Rule 116 Amendment After Final Action mailed September 7, 2005.

In the final Office Action mailed August 3, 2005, claim 1 was objected to because of the informalities noted in numbered paragraph 2 of the Office Action. Appropriate correction was required, and by the foregoing proposed amendments to claim 1, the Examiner will please note that these informalities have all been addressed and corrected.

Also in the final Office Action mailed August 3, 2005, claims 1-3 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dubanchet in view of Christensen et al. For the reasons that follow, Applicant respectfully requests reconsideration of this ground for rejecting claims 1-3.

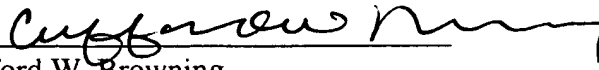
As the Examiner noted, Applicant did file arguments in his Amendment After Office Action Mailed January 19, 2005 that distinguished the claims of the present application over this very ground of prior art rejection, and to further rebut this ground of rejection Applicant tendered his Rule 1.132 Declaration to distinguish further the claims of the present application, as then amended, over these same prior art references. It is troubling to Applicant that the Examiner stated in the final Office Action mailed August 3, 2005, that he found the Applicant's arguments in the Rule 1.132 Declaration to be not persuasive. More troubling, however, is the fact that in the very next sentence the Examiner said, "Although Applicant may use a lower temperature than Dubanchet when mixing the meat with the olive oil, it is expected that the antioxidant benefits of olive oil would be preserved at lower temperatures." This strongly suggests to Applicant that the Examiner has missed the very gist of the Applicant's invention. Applicant does use a much lower processing temperature than that used in Dubanchet for two very good and patentably noteworthy reasons. Only one of those reasons is to maintain the chemical properties of the liquid olive oil in its virgin state quite unlike the physical transformation of the olive oil that occurs in following the teachings of the Dubanchet reference because of the fact that Dubanchet teaches heating liquid olive oil to a temperature of 100 degrees Centigrade to transform it physically into a solid. Secondly, the resulting products of the process of the present invention, which is carried out at low temperatures, produces a resultant product with excellent olive oil stability, thereby eliminating the appearance of de-oiling as is the case with the methods of the prior art, including that of Dubanchet. Applicant requests the Examiner to review again his Rule 1.132 Declaration, noting especially that the Applicant points out not only the lack of physical change in the liquid olive oil when used at low temperatures, as in the present invention, and the stability brought to the resultant end products by reason of the low temperature

processing of the liquid olive oil, as compared to the classic techniques of the prior art, including that of Dubanchet, in which the physical transformation of the olive oil has led to final products that usually show the appearance of de-oiling.

The Examiner is also asked to note that the proposed Rule 116 amendments to claim 1 does not include the addition of the word liquid in front of olive oil, but Applicant argues nevertheless that liquid olive oil is inherently disclosed in the Applicant's specification, as the olive oil there described is being processed at a temperature of 4 degrees Centigrade, and inherently olive oil would be a liquid at 4 degrees Centigrade. Applicant has also added to step b the limitation that the mixing that occurs after the addition of liquid olive oil is to create the maximum possible embodiment of oil within the resulting mixture (specification page 2, lines 41-42). This limitation is missing from the Dubanchet reference, and in fact, is the antithesis of the Dubanchet teachings, as is use of liquid olive oil.

For these foregoing reasons, Applicant respectfully requests entry of the foregoing claim amendments under Rule 116, and then a favorable reconsideration of the present application in light thereof. Applicant also wishes to express his deep disappointment in the fact that the Examiner chose to make the Office Action mailed August 3, 2005 a final Office Action given that it was the first Office Action issued after Applicant's Request for Continued Examination, accompanied by a Rule 1.132 Declaration, and which was filed at great expenses. Applicant would request the Examiner to favorably reconsider the present application in light of those facts.

Respectfully submitted,

By: 
Clifford W. Browning
Reg. No. 32,201
Woodard, Emhardt et al. LLP
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137
(317) 634-3456

#365639